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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,513	08/19/2003	Victor T. Chen	279.494US2	4511
21186	7590	08/26/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.				LAYNO, CARL HERNANDZ
P.O. BOX 2938 MINNEAPOLIS, MN 55402				ART UNIT 3762
				PAPER NUMBER

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/643,513	CHEN ET AL.
	Examiner <i>Carl H. Layno 8/23/04</i>	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 August 2003.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 28-38 is/are allowed.  
 6) Claim(s) 1,2,8,9 and 21 is/are rejected.  
 7) Claim(s) 3-7,10-20 and 22-27 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 8/19/03.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for priority as a Continuation of U.S. Application Serial No.09/839,123, filed April 20, 2001, now U.S. Patent No. 6,618,617.

### ***Information Disclosure Statement***

2. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on August 19, 2003.

### ***Drawings***

3. Applicant's formal drawings have been approved by the Examiner.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 2, 8, 9, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Brandell '651.

The Brandell '651 patent describes an implantable atrial defibrillator (Fig. 1) comprising signal detection circuits (**50, 52, 54, and 56**) for detecting right ventricular and right atrial signals, an atrial defibrillation circuit **74,76**, a microprocessor circuit **58**, and a safety timer circuits **65** for performing a patient activated delay for delaying the atrial defibrillation shock. The patient activated delay time is a preprogrammed 20 minutes **138** (Fig.3), which may be repeated a number of times depending upon the patient who determines when and if additional delay periods are necessary. If the patient does not send a delay/deactivation signal to the implantable defibrillator, the timeout delay period will expire permitting the delivery of an atrial cardioverting therapy **124** (Fig.3 – col.8, line 61 thru col.9, line14).

In regard to claims 2 and 9, applicant's attention is directed to block **122** (Fig.2) which performs this function.

In regard to claim 8, unit **100** (Fig.1) performs the function of the "external activator".

In regard to claim 21, RF transceiver circuit **102** (Fig.1) performs the function of applicant's claimed "means for receiving a request".

6. Claims 3-7, 10-20, and 22-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 28-38 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter:  
Independent claim 28 recites the specifics of a patient activator device including the unusual feature of a “tone detector” not found in any of the other prior art references of record.

Independent claim 35 describes a method for delivering an atrial shock involving the steps of “timing a duration”, “initiating a delay period”, and “delivering the atrial shock after the delay period expires”. Though the Brandell ‘651 patent, described supra, specifies the use of magnetic fields in programming its implanted defibrillator, it does not specify the use of these fields for timing durations and delay periods.

In view of the shortcomings in the prior art, the Examiner deems these claims and their depending claims to be allowable.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every

other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's new Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.

Carl H. Layno

CARL LAYNO  
PRIMARY EXAMINER

CHL  
8/23/2004